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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT RUELAS,

Defendant and Appellant.

D055647

(Super. Ct. No. SCD216579)

APPEAL from a judgment of the Superior Court of San Diego County, Leo Valentine, Jr., Judge. Affirmed.

Robert Ruelas appeals his conviction of seven counts each of robbery and making a criminal threat, and one count each of assault with a firearm, vehicle theft and burglary. Ruelas claims the trial court erred in failing to grant his motion for a mistrial after a witness testified that Ruelas had served prison time. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2008, Jamie Hunt, Jason Hunt, Joshua Craig, Samuel Hinze, Frederick Hinze, and Justin Holman shared an apartment located on Harmarsh Street in San Diego.

(We will refer to these men by their first names.) In the early morning hours of September 8, all of the roommates, except for Jamie, were inside their apartment, along with two friends, Adrian Gephart and Christopher Fairless. Fairless, Samuel and Frederick had been drinking and smoking marijuana, and Justin had also smoked marijuana.

Samuel, who had seen Ruelas before, allowed Ruelas and his girlfriend Marie Nguyen into the apartment to charge Ruelas's cell phone. Soon after, Ruelas pulled out a gun, pointed it at Samuel and Frederick, demanded that they go upstairs, and threatened to kill them if they did not comply. Once upstairs, Ruelas made the men enter Frederick's room where Fairless and Justin were playing video games. Ruelas told the men to throw their cell phones and wallets on the floor, and threatened to shoot them. Justin testified that Ruelas told the men to not try anything "because he had shot people before and he didn't have a problem with going to jail."

Ruelas moved to another room where Joshua and Gephart were watching a movie. Ruelas threatened to kill them, and demanded their wallets and cell phones. Ruelas had all of the men remove their pants, ordered them into the bathroom, and threatened to kill them if they made a move.

Ruelas then banged on the door to Jason's room as his friends yelled at him to open the door. Once Jason opened the door, Ruelas hit him on the head with his gun and pushed him into the bathroom. Ruelas took Jason's cell phone and threatened to kill Jason if he discovered that Jason had called the police.

Ruelas ordered Justin and Gephart to put their pants back on, and had them help him and Nguyen take items to Jamie's Chevrolet Tahoe parked outside. Ruelas took

personal belongings from some of the men, including wallets, cell phones, and keys. He also stole the Tahoe and numerous items from the apartment, including Jason's snowboard. After telling the men that he had their identification and knew where they lived, Ruelas threatened to kill them, or send his friends to kill them, if they called the police.

The men eventually left the bathroom and called the police from a friend's house. The friend testified that the men were "pretty scared" and a few were teary eyed. The men agreed after the incident that they would not tell the police that Ruelas and Nguyen had previously been to the apartment because they were scared for their future safety based on Ruelas's threats.

The police arrested Ruelas and Nguyen the following month. They found Jason's snowboard inside Ruelas's apartment, and recovered the stolen Tahoe about half a mile from where Ruelas lived.

Ruelas testified in his own defense at his trial. Ruelas claimed that he and Nguyen went to the victims' apartment to get a ride. At one point, Nguyen left to use the upstairs bathroom. Ruelas ran upstairs after hearing Nguyen scream, and saw Jason trying to pull her into the bathroom. Ruelas claimed he hit Jason in the head with a BB gun he had found on the floor. He then grabbed keys off the table and left with Nguyen. Ruelas admitted taking a "rifle" and "car," but denied taking anything else from the apartment, and denied threatening to kill anyone. He claimed that the snowboard the police recovered was one Nguyen had previously purchased from Jason. Ruelas admitted that he had been convicted of a crime of dishonesty in 2002 and that his moniker was

"Littles." He claimed that he did not call the police after the incident because both he and Nguyen had warrants out for their arrest.

Ruelas was charged with seven counts each of first degree robbery and making a criminal threat, and one count each of assault with a firearm, vehicle theft and burglary. The information also alleged certain firearm enhancements, and that Ruelas had suffered a prior conviction that qualified as a prison prior, a prior serious felony conviction, and a prior strike conviction. A jury found Ruelas guilty of all counts, and found all of the firearm allegations true. In a bifurcated proceeding, Ruelas waived his right to a jury trial and admitted the prior conviction allegations. The trial court sentenced him to a total term of 33 years in state prison. Ruelas timely appealed.

DISCUSSION

A. Facts

In response to a question from the prosecutor asking why he was "scared" of Ruelas's threats, Justin testified that when he previously met Ruelas, Ruelas had talked about being in prison. Defense counsel objected on the bases of "speculation" and "foundation" and moved to strike Justin's answer. After the trial court overruled the objection, the prosecutor asked Justin to continue. Justin continued, "Just like that, he was talking about prison. . . . And because he was talking about prison — ." Defense counsel moved for a mistrial, and asked to be heard at sidebar.

After the jury had been excused, defense counsel argued that there was no way to "unring the bell" and that the only thing the court could do was declare a mistrial. The prosecutor disagreed. He asserted that the testimony was admissible as it addressed why

Justin was reasonably afraid of Ruelas, an element of the crime of making a criminal threat, and argued that the testimony was not overly prejudicial. (Pen. Code, § 422.) The trial court declined to declare a mistrial. It found the testimony admissible as it went to the victim's state of mind, and was not unduly prejudicial because the information did not come from law enforcement. Defense counsel conceded that the testimony was relevant, but argued that the information was so prejudicial that Ruelas could no longer have a fair trial.

Before the jury reassembled, the trial court asked defense counsel whether he wanted the court to give a limiting instruction to the jury. Defense counsel thought such an instruction would be appropriate. The court advised the jury: "Ladies and gentlemen, there is some question of whether or not the witness was afraid and why he was afraid. The court has permitted this line of examination so you can assess what impact that it had upon this particular witness. So what is being testified to, you may hear it just to assess the impact it had on the witness but not whether what was told to him was true, just the impact it had on him."

B. Analysis

Ruelas contends the trial court committed reversible error when it denied his motion for a mistrial. He asserts the testimony was so prejudicial that no admonition by the trial court would have been sufficient to cure it, and that the court should have granted his motion for mistrial. We disagree.

The trial court should grant a mistrial if it "is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with

considerable discretion in ruling on mistrial motions.'" (*People v. Jenkins* (2000) 22 Cal.4th 900, 985-986, quoting *People v. Haskett* (1982) 30 Cal.3d 841, 854.) We review the denial of a mistrial motion for an abuse of discretion. (*People v. Welch* (1999) 20 Cal.4th 701, 749.) Unless the trial court's ruling is "arbitrary, capricious or patently absurd," we will not disturb it on appeal. (*People v. Jordan* (1986) 42 Cal.3d 308, 316.)

Fear for one's safety and the reasonableness of the fear under the circumstances are elements of the crime of making a criminal threat. (Pen. Code, § 422; *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.) Thus, as Ruelas conceded at trial, the evidence was relevant to evaluate Justin's state of mind during the incident. The evidence also explained Justin's reluctance to contact the police after the incident.

The volunteered testimony was brief and isolated, and the trial court properly admonished the jury to consider the impact of the statement on Justin, not whether the statement was true. The instructions also reminded the jury that if evidence was admitted for a limited purpose, they could consider the evidence only for that purpose and no other. (CALCRIM No. 303.) We must presume the jury understood and followed these instructions. (*People v. Young* (2005) 34 Cal.4th 1149, 1214.) Moreover, the jury heard Ruelas testify that he had suffered a felony conviction for a crime of dishonesty; thus, the prejudicial impact of the prison reference was lessened by the jury's knowledge of Ruelas's criminal past.

In arguing the prison reference was incurably prejudicial, Ruelas relied on *People v. Allen* (1978) 77 Cal.App.3d 924 to argue that the case was very close and turned on the credibility of the witnesses. He is correct that *Allen* was "a close case in which the

credibility of [each side's] . . . witnesses were the key factors. The [defendant] was not arrested at the scene of the crime, no stolen goods were found in his possession, the gun was not found and the identification evidence by the victim and her husband was not convincing." (*Id.* at p. 938.) Here, although Ruelas's credibility was directly at issue, he was the sole witness for the defense and each of the seven victims consistently testified regarding the incident, including that Ruelas had taken items from them and made threats while holding a gun. The police also found Jason's snowboard in Ruelas's apartment, and the stolen Tahoe near the apartment. Thus, while we agree that the prison remark was prejudicial, this case did not present a closely matched credibility contest. We see no reasonable probability that Ruelas would have received a more favorable outcome in the absence of the evidence, and no abuse of discretion in the trial court's denial of his motion for a mistrial.

DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.